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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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In re:	: Chapter 11
	: :
CIRCUIT CITY STORES, INC., <u>et al.</u> ,	: 1Case No. 08-35653 (KRH)
	: :
Debtors.	: :
	: Jointly Administered
----- X	

**ORDER SUSTAINING OBJECTION TO
ADMINISTRATIVE CLAIM FILED BY TECH FOR LESS, LLC**

THIS MATTER having come before the Court on the Liquidating Trust's Seventh Omnibus Objection to Claims (Reduction of Certain Partially Invalid Claims, Disallowance of Certain Invalid Claims and Reclassification of Certain Incorrectly Classified Claims) [Docket No. 10045] (the "Objection") to the administrative claim identified as claim number 13947 (the "TFL Claim") filed by TFL Enterprises LLC a/k/a Tech For Less, LLC ("TFL"), which requested that the TFL Claim be disallowed for those reasons set forth in the Objection; and it appearing that due and proper notice and service of the Objection and the notice of hearing on the Objection as it relates to the TFL Claim (the "TFL Hearing") was good and sufficient; having considered the TFL Claim, the Objection, the Response of TFL Enterprises LLC to the Liquidating Trust's Seventh Omnibus

Objection to Claims (Reduction of Certain Partially Invalid Claims, Disallowance of Certain Invalid Claims and Reclassification of Certain Incorrectly Classified Claims) [Docket No. 10233] (the “Response”), the Reply Brief Regarding Objection to Administrative Claim Filed by Tech for Less, LLC [Docket No. 11566] (the “Reply Brief”) and the evidence presented at the TFL Hearing; and it appearing that the relief requested in the Objection as articulated in the Reply Brief is in the best interest of the Liquidating Trust, the Debtors’ estates and creditors and other parties-in-interest; and after due deliberation thereon good and sufficient cause exists for the granting of the relief as set forth herein,

IT IS HEREBY ORDERED, FOUND AND DETERMINED THAT:¹

.1 The Objection as it relates to the TFL Claim is SUSTAINED.

.2 For the reason contained herein and articulated in Court on December 20, 2011, the TFL Claim is forever disallowed in its entirety for all purposes in these bankruptcy cases.

3. As the Court has previously stated, “when a response is filed to an objection, the claim objection becomes a contested matter governed by Bankruptcy Rule 9014.” *See, In re Circuit City Stores, Inc.*, 2009 WL 4755253, p. 2 (Bankr. E.D. Va. 2009). Accordingly, pursuant to Bankruptcy Rule 9014(d) and 9017, the (a) Notice and Affidavit - Notice of Affidavit in Support of TFL Enterprises, LLCs Administrative Claim Request and Response to the Liquidating Filed by Tech For Less LLC filed by Sheila G. de la Cruz of Hirschler Fleischer, P.C. on behalf of TFL Enterprise, LLC [Docket No.11575] , (b) Notice and Affidavit - Notice of Affidavit in Support of TFL Enterprises, LLCs Administrative Claim Request and Response to the Liquidating Filed by Tech For Less LLC filed by Sheila G. de la Cruz of Hirschler Fleischer, P.C. on behalf of TFL Enterprise, LLC [Docket No. 11576], (c) Amended Notice and Affidavit (as to

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

title only) Notice of Affidavit in Support of TFL Enterprises, LLCs Administrative Claim Request and Response to the Liquidating Trusts Reply Brief Regarding Objection to Administrative Claim filed by Sheila G. de la Cruz of Hirschler Fleischer, P.C. on behalf of TFL Enterprise, LLC [Docket No. 11577], and (d) Amended Notice and Affidavit (as to title only) Notice of Affidavit in Support of TFL Enterprises, LLCs Administrative Claim Request and Response to the Liquidating Trusts Reply Brief Regarding Objection to Administrative Claim filed by Sheila G. de la Cruz of Hirschler Fleischer, P.C. on behalf of TFL Enterprise, LLC {Docket No. 11578} were not appropriate and, therefore, are not considered in connection with the Court's ruling on the Objection.

4. The Court finds that TFL has failed to meet its burden of proof. The Court has no evidence before it to demonstrate that 1,757 items of purchased merchandise were not delivered as required by the contract between the parties.

.5 The Court further finds that the terms of the Electronics Merchandise Liquidation Agreement (the "EML Agreement") governed the transaction between the parties. The Court finds that the EML Agreement specifically provided that the purchase or its agent had the right to inspect the merchandise prior to accepting possession to ensure compliance with the terms of the invoice. The Court further finds that any inspection certainly included compliance with a number of items that were being accepted pursuant to the terms of the invoice. The EML Agreement provides that (a) delivery was to take place at Circuit City, (b) risk of loss shifted upon acceptance and delivery which occurred at Circuit City, (c) the purchaser was responsible for all shipping arrangements and removal of the merchandise from Circuit City's premises, and (d) payment was to occur two days later. The Court further finds that there was no rejection of the acceptance in this case. There was an acceptance, there was a payment, and there is absolutely no

evidence that would justify some sort of revocation of that acceptance. A request for administrative expense filed almost six month after acceptance is neither a rejection nor a revocation.

.3 Given the heightened nature of the burden that an administrative claimant has under the laws as adopted by the Fourth Circuit Court of Appeals, the Court finds that there is no basis for an administrative claim in the amount of \$104,986.36 or in any other amount. And accordingly, the Objection is hereby sustained as provided herein, and the TFL Claim is hereby disallowed in its entirety for all purposes in these bankruptcy cases.

.4 The Liquidating Trust shall serve a copy of this Order on TFL on or before five (5) business days from the entry of this Order.

.5 This Court shall retain jurisdiction to hear and determine all matters arising from or relating to this Order.

Dated: Richmond, Virginia
_____, 2012

HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Paula S. Beran

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CERTIFICATION

I hereby certify that the foregoing proposed Order has been either served on or endorsed by all necessary parties.

/s/ Paula S. Beran